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## LANGUAGE MASTERY AND LEGAL TRAINING

IRVING M. MEHLER†

Qui novit neque id quod sentit exprimit  
perinde est ac si nesciret.\*

A PROBLEM of long-standing concern which continues to plague legal educators is the inability of law students to use the English language — both the spoken and written word — properly and effectively.<sup>1</sup> Among the many law schools, it can probably be stated without fear of contradiction, that there are few law teachers who would deny having been rudely jolted at some time or other at the inability of so many law students to write or express themselves in clear, concise and elegant prose. And yet, at the same time, it is actually difficult to conceive that an overwhelming majority of the students entering law school at the present time have had a minimum of sixteen years of formal basic schooling.

Empirically, a legal educator of note has poignantly summed up the language deficiency situation in the following manner:

But very, very many of them [embryo counselors at law] are hopelessly, deplorably unskilled and inept in the use of words to say what they mean, or, indeed, to say anything at all. Of the two hundred and twenty-five there have not been more than a

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\* He who knows but cannot express what he knows is as if he were ignorant.

1. Chief Justice Vanderbilt, in his report on prelegal education refers to the "well-nigh" universal criticism respecting the inability of law students to think straight and to write and speak in clear, forceful attractive English." Vanderbilt, *A report on Prelegal Education*, 25 N.Y.U.L. REV. 199, 209, 246 (1950). See also Vanderbilt, *The Future of Legal Education: We Must Face the Realities of Modern Life*, 43 A.B.A.J. 207 (1957): "To mention only the most obvious matters, it is notorious that many lawyers do not write well and that effective advocates are rarities at the Bar."; Gilmore, *A Faculty Opinion*, 5 YALE LAW REP. 4 (1959): "It would be desirable that each student who graduates from this school know how to read and write. I do not consider this objective to be a modest one; on the contrary, it is extravagantly ambitious."; Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 660 (1935): "I want every law student to be able to read and write. Half of my first year students, more than a third of my second year students can do neither." Perhaps the most widely publicized comment is that of Columbia's Dean Warren when he said: "We . . . expect that the college graduate be able to read argumentative or expository prose swiftly, comprehendingly, and retentively; that he be able to express himself in speech and writing. . . . But we have found that few of our entering students, however carefully selected, possess these skills to the extent needed for law study." COLUMBIA UNIVERSITY REPORT OF THE DEAN OF THE SCHOOL OF LAW 5-6 (1955).

dozen who write really well, choosing the apt word and saying the thing effectively, . . . Once past my dozen, perhaps less than half of the remainder are capable of writing a simple essay, in English unadorned, to convey a plain meaning . . . . The rest shade off into varying degrees of floundering incoherence, stammering repetition and murky confusion of thought.<sup>2</sup>

He then goes on to say: "Is everything well with an education, when sixteen years of it lead only to utter consternation at the prospect of a little original writing."<sup>3</sup> And finally, his pointed query: "What is to be done about all this?"<sup>4</sup>

# I.

## THE LAW SCHOOLS' BURDEN

That there is a sharp and continuing awareness within the legal teaching profession that a facile and effective command of English, by law students and lawyers, is a vital necessity, cannot be gainsaid.<sup>5</sup>

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2. Prosser, *English As She Is Wrote*, 7 J. LEGAL ED. 155, 157 (1954), originally published in 28 ENGLISH JOURNAL 38 (1939).

3. *Id.* at 160.

4. *Ibid.*

5. See *Report of the Commission on Prelegal Education*, 6 J. LEGAL ED. 174, 181-83 (1953): "The Association of American Law Schools has emphasized the need for education in comprehension and expression in words as the primary objective of prelegal training:

'Language is the lawyer's working tool. He must be able, in the drafting of legal instruments, to convey meaning clearly and effectively. In oral and written advocacy he must be capable of communicating ideas convincingly and concisely. . . . What is needed, therefore, is the skill which can be obtained only through practice in:

1. Expression: adequate vocabulary, familiarity with modern usage, grammatical correctness, organized presentation, conciseness and clarity of statement in writing and speaking.
2. Comprehension: concentration and effective recollection in reading and listening, perception of meaning conveyed by verbal symbols.

'Both expression and comprehension also require a developed sensitivity to:

3. Fluidity of language: varying meaning of words in different times and contexts, shades of meaning, interpretive problems, hazards in use of ambiguous terms.
4. Deceptiveness of language: emotionally-charged words, catch-phrases, hidden meanings of words, empty generalizations.

"Obviously the potential lawyer must take advantage of every opportunity to improve his skill in understanding and using the English language. He must be able to read, not secure vague general impressions, but single out the main arguments, to judge the extent to which the details support them, to perceive the subtle shadings of word meanings, to distinguish between emotive rhetoric and sound, logical opinion, and to capture the spirit, not merely the letter of the writer. Not limiting himself to books appealing to his special interests, he must range widely in his reading to acquire a versatile vocabulary and a broad general background.

"In speaking and writing, he cannot be content with acquiring a superficial literacy. A grasp of the minimum essentials of 'Good English' — spelling pronunciation, grammar, sentence structure, and diction — should go without saying. But mere correctness is a negative virtue. The potential lawyer must

Nearly twenty years ago, the dean of a midwestern law school exhibited a then burgeoning awareness of the problem in an address delivered at the joint session of the Section of Legal Education and Admissions to the Bar of the American Bar Association and the National Conference of Bar Examiners, when he stated: "There is one lawyer's technique, however, which the law schools should and can do more to develop. This is the art of writing. We may perhaps place upon the colleges some of the blame for the serious illiteracy of law school graduates, but the law schools must accept their share."<sup>6</sup>

Another legal educator of note has summed up his conception of the problem in the following manner:

"One thing is certain (and we should freely admit it) language is a lawyer's principle stock in trade. That is so true it cannot be funny, and the answer to those who think it is humorous and derogatory is to say, 'Exactly so, and so what!' One can only learn about ideas (which is what law is) and he can only deal

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learn that in his chosen profession, clear speaking and writing are indispensable, and that crystal clarity results only from the most intimate acquaintance with words and their ways. He must also work to achieve some measure of eloquence and grace, to express himself with force and flavor as well as with accuracy. He should learn how words can 'spin the gossamers as well as forge the anchors of the mind.'

"Good courses in literature, language, speech, and composition have special value for the potential lawyer because they are directly concerned with inculcating these skills. But literacy is not a departmental monopoly. Any well-taught course in any department will serve the same ends if it presents:

1. A wide variety of reading selected from well-written sources.
2. A large amount of well-directed class discussion.
3. Frequent opportunities for writing, including short, critical papers, longer reports based on independent research, and full-scale essay questions on examinations.
4. Detailed criticism of student writing, with emphasis on both form and content.
5. A standard of grading that rewards good writing and penalizes bad.

"By the same reasoning, a course does not adequately serve the student's language needs if it is taught entirely from a single textbook; if the material is spoon-fed to the student so that he does not have to think for himself and express his own ideas; if essay questions are sacrificed to multiple-choice examinations which replace student writing and faculty criticism with rapid underlining and matching scoring; or if a student is allowed to write poorly because the professor has not been employed to teach English.

"Thus the cure for the widespread semi-literacy among prelaw students is not more majors in English or more courses in literature, speech, or composition taught in the English Department; it is the conviction of the Commission that the responsibility for turning out literate graduates rests only primarily with the English Department. It is incontrovertibly the responsibility of the entire faculty." See also Silber, *English Usage and Spelling in Law School: An Experiment and Possible Solution*, 11 J. LEGAL ED. 253 (1958). For a recent appraisal of the state of English composition in most United States schools, see *Time Magazine*, "English Written Here," November 9, 1959, where it is noted on page 50, "[T]he state of English Composition in most U.S. schools is deplorable." A solution to the problem suggested by President Henry Chauncey of the Educational Testing Service is "to get U.S. students writing more often and better."

6. Katz, *What Changes Are Practical in Formalized Legal Education*, 9 AM. LAW S. REV. 1184, 1189 (1941).

with them through the medium of language. *We have neglected emphasizing its importance, and its skillful and exact use, and certainly few matters are finally more important in the training of a lawyer.*" (Emphasis added.)<sup>7</sup>

Since then, other legal educators have also exhibited a salutary attitude toward this vital problem, taking a forthright stand by inaugurating courses of remedial action in an attempt to correct this fundamental shortcoming.<sup>8</sup>

There is no doubt that law schools have made significant strides in seeking means to eradicate this language deficiency barrier. One need do no more than peruse any law school catalogue to convince himself that law schools have taken up this important challenge en masse and also, at times, with unique and individual emphasis.<sup>9</sup>

In this area of remedial action, some law schools have even gone so far as to point with pride to their legal writing programs by describing them in detail to the law teaching profession.<sup>10</sup> Others, have sought to revitalize and improve their legal writing programs to meet the caustic criticism that has been leveled at the law schools, to wit, that law graduates cannot effectively speak or write.<sup>11</sup> Still others, have simply sought to meet the problem head on by setting up a course dealing with English fundamentals within the required law school curriculum.<sup>12</sup>

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7. Gavit, *Where Do We Go from Here in Legal Education*, 23 ROCKY Mt. L. REV. 24, 28-29 (1950).

8. E.g., Groves, *Help for the Semi-literate Law Student*, 10 J. LEGAL ED. 369 (1958); Rasco, *The Miami Plan: Basic English for Law Students*, 43 A.B.A.J. 1013 (1957). See Miller, *On Legal Style*, 43 Ky. L.J. 235, 255 n.25 (1955): "My own experience with student writing has been fully as disheartening as his [Dean Prosser's]. We law professors must teach grammar and rhetoric as well as law." See also Hogan, *The Need for a Course in Jurisprudence in Law Schools*, 9 J. LEGAL ED. 219, 220 (1956): "The A.B. degree no longer certifies that the possessor has ascended the seven steps to learning, namely, Grammar, Rhetoric, Dialectics, Arithmetic, Geometry, Music and Astronomy."

9. Many of the law school catalogues contain statements which specifically emphasize the need for improved training in the use of the English Language. E.g., Cornell states that it is of "first importance" for the lawyer to be able to "express himself clearly and cogently, both orally and in writing." The University of Pennsylvania catalogue states: "An ability to speak and write clearly and concisely is of the highest importance."

10. E.g., see Kalven, *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL ED. 107 (1948); Macauley and Manne, *A Low-Cost Legal Writing Program — The Wisconsin Experience*, 11 J. LEGAL ED. 387 (1959); Moreland, *Legal Writing and Research in the Smaller Schools*, 7 J. LEGAL ED. 49 (1954); Roalfe and Higman, *Legal Writing and Research at Northwestern University*, 9 J. LEGAL ED. 81 (1956).

11. E.g., Volz, *The Legal Problems Courses at the University of Kansas City*, 7 J. LEGAL ED. 91 (1954); "To meet the criticism that law graduates cannot effectively speak or write, the faculty voted to require moot court of all students and revitalized the courses in legal bibliography and in legal research and writing. Also, the writing of research papers was made a part of several courses."

12. E.g., BULLETIN OF THE UNIVERSITY OF DENVER, COLLEGE OF LAW 36 (1957-1958): "INTRODUCTION TO LEGAL WRITING: 1 quarter hour. Instruction in

Commendably, law schools have attacked this educational carcinoma with directness of action and intensity of effort, but unfortunately, it seems, with not enough commensurate vision and depth. It is therefore the purpose of this article to attempt to set forth a program whereby this language malignancy may be more effectively dealt with in order to assure greater facility and command on the part of law students in their daily use of the English language.

## II.

### AREAS IN NEED OF MORE EFFECTIVE COMMUNICATION TRAINING

Professor Leach has stated that if he were to try to describe a good lawyer in a phrase, he would call him "a professional in versatility."<sup>13</sup> He then goes on to say "this is another way of saying that he has acquired certain abilities that enable him to operate effectively in any enterprise, familiar or unfamiliar, to diagnose its difficulties and contribute substantially to the solution of its problems."<sup>14</sup> If we agree with Professor Leach's succinct and meaningful description of a lawyer, then we must concede that a lawyer's range and command of language pertaining to his daily dealing with variegated human motives, varied human endeavors and diversely complex problems and their solutions, should be broad and deep, indeed.

Of course, not to be lost sight of is the fact that the penultimate and ultimate end of all law is the quest and attainment of justice — human justice. But human justice, oftentimes, has a penumbral and elusive quality. Operating in the grey areas of human affairs and being compounded of many intangible and dusk-tinged ingredients, one is often prone to lose sight of the fact that at times there are also many additional hidden elements lurking beneath the surface of a factual situation not entirely exposed to one's ordinary probing and humanly finite powers of discernment. We may often sense these unknown elements intuitively, but our ability to raise them to a visible podium of tangibility or understanding may on occasion elude us. More often than not, this inability is purely a by-product of lack of language mastery in its broadest sense, with the result, that the goal we seek — justice — is ultimately thwarted. The writer there-

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grammar and rhetoric; sentence writing; the paragraph; the essay; diction; legal draftsmanship." The writer is happy to relate that in teaching this course he, himself, profited greatly. This course has now been dropped from the curriculum; but the writer managed to include large portions of it in the Legal Research and Writing course which he recently had occasion to teach. The reaction of most students was gratifying.

13. Leach, *Property Law Taught in Two Packages*, 1 J. LEGAL ED. 28, 30 (1948).

14. *Ibid.*

fore feels that greater emphasis on expanded language techniques and mastery in the following areas of legal communication, to wit, interviewing, counselling, advocacy, negotiation and drafting, will do much to aid law students to become aware of the importance of language as an indispensable tool of the lawyer in his quest for equitable solutions and the ultimate attainment of justice.

## A.

### Interviewing

For years now, law schools have been concerned primarily with the educational dietary formula of feeding appellate decisions to neophyte, as well as to advanced, law students. This is not said in derogation of the case system of teaching with its many rich and varied facets of expression. But when viewed realistically, it is well to note that the study of an appellate decision is merely a perusal of an aperçue or tail end compendium of a live factual situation.<sup>15</sup> And there are voices being raised in criticism that the study of law through the dissection of appellate opinions in a Victorian anachronism.<sup>16</sup> Pedagogically, can it be denied that there is a great deal of merit in teaching the student something about the case as it starts and then proceeds to evolve in the lawyer's office? For in reality, a case begins when it is brought into a lawyer's office and the lawyer has to make the initial decision of what to do about it and how to prod the inert wheels of justice into movement. As Professor Lasswell has so aptly pointed out, when a case has found its way into the office "there is less sterile pedantry about what is or is not the law and a more serious quest for whatever can aid the lawyer to

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15. See Miller, *Prolegomenon to a Modernized Study of Administrative Law*, 12 J. LEGAL ED. 33, 34, 37 (1959): "Since the Langdellian revolution in law teaching, judicial decisions have been considered to be the proper stuff for pedagogical purposes and for making 'scientific analyses of the law.' But it is at best a single-focused approach to a complex problem, one that fails to see either the forest or all of the trees because it concentrates on only one variety of tree. . . . The particularism of appellate decisions does not meet the demands lawyers are making and people are making on lawyers today."

16. See Davis, *Reflections of a Law Professor about Instruction and Research in Public Administration*, 47 AM. POL. SCI. REV. 728, 729 n.3 (1953): "Indeed, the appellate opinion is the obsession of today's legal education. . . . Legal education needs a basic shift toward lawyers' problems that are unrelated to litigation; problems of what-to-do instead of problems of who-should-win; problems of choosing among practical policies, not further exercises in analytical refinements; problems involving the kind of facts that lawyers must consider in advising businessmen, not merely neat summaries of facts in appellate opinions; problems intertwined with business or politics or technology, not merely interpreting statutes or applying judge-made law." See also Miller, *The Impact of Public Law on Legal Education*, 12 J. LEGAL ED. 483 (1960).

cope with his problems."<sup>17</sup> When this happens, the primary step — the interview — which demands language utilization and mastery immediately becomes a most important cog in the machine of justice.

Viewing any case once it has found its way into the lawyer's office, it is basic that the language skill of the attorney — in his role as interviewer throughout the entire history of a case — will have a definite bearing on its eventual outcome; for the direct or subtle nuances of the interview can well make or break its final outcome. It is easy to shunt the responsibility for the outcome of a case to the client. But in pointing the finger instead of crooking it, it may often be ascertained that many a practitioner tacitly invites failure in his duty to represent his client competently because of, in many instances, his dulled linguistic habits, inadequate command and unskillful use of language in relation to the problem at hand. As Professor Probert has so clearly pointed out: "[o]ur language habits have too much dulled our living potentials, have too much blocked our awareness of what we are and what we are about."<sup>18</sup> But of course, poor language habits are only one facet of this many-headed monster.

Conducting a skillful interview within the framework of the lawyer-client relationship is not an easy task. Aside from the psychological and neuro-psychiatric aspects of the interview — involving both the conscious and unconscious processes of the psyche in turmoil — the additional variegated factors of the case that the lawyer must contend with are also quite important. But in the final analysis, they are all bottomed on the skillful use of language in interviewing both clients and witnesses and the careful dissection of the language employed in response to the questions asked. For if the interview is skillfully conducted, the real factual problem — the crux of the case — usually emerges. The solution is then not too far behind.

## B.

### Counselling

Without fear of contradiction, it can be stated that the counselling of clients is probably one of the most important phases of a lawyer's professional work. For actually, not only is the lawyer a "counsellor-at-law," but in the broader sense, he may be viewed as an omniscient adviser of human beings concerning their multifarious

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17. Lasswell, *The Lawyer of the Future*, 16 BAR BULL. 144 (N.Y. County Lawyers' Ass'n 1959). See also Mehler, *In Defense of Practitioners as Teachers*, 9 J. LEGAL ED. 231 (1956); Wyzanski, *The Trend of the Law and Its Impact on Legal Education*, 57 HARV. L. REV. 558 (1944).

18. Probert, *Preface to Symposium on the Language of the Law*, 9 W. RES. L. REV. 115 (1958).



every day social and economic problems. As one practitioner has empirically observed: "Most lawyers will concede that the problems they, as counsellors-at-law, encounter in certain fields of law are primarily problems not of law but of human relations."<sup>19</sup> For lawyers, therefore, to function effectively in their true role as counsellors involves not only a solid grounding in the law, but in addition, psychological insight and, most importantly — a mastery of language and its techniques to assure the merging and proper application of law and insight to the problem at hand. Words are the indispensable tools of the lawyer's craft. The thoughtful practitioner must know how words work and to what varied use they can be put to assure the client competent advice and judicious guidance. By so doing, the lawyer can contribute his share, as a forthright and sagacious counsellor, to the elevation of the profession and stability of society. It is not without significance that the late Judge Vanderbilt, in speaking of the basic ingredients which are always present in the work of the counsellor and advocate, has listed six elements, including, as last but not least, the important element of English mastery: the assembling and marshalling of facts; the application thereto of the principles of law; dealing with human nature in a wide variety; giving consideration to the economic, political and social environment of each transaction coming up for consideration, reasoning back and forth with respect to all four of these types of material; *and the use of understandable and convincing English, both oral and written.*<sup>20</sup> (Emphasis added.)

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19. Pilpel, *Are Lawyers Missing the Boat?*, 16 BAR BULL. 133 (N.Y. County Lawyers' Ass'n 1959). "Most lawyers will concede that the human relations aspects far transcend in importance the legal aspects not only in the family law field but also in the field of criminal law. But many lawyers do not recognize that the role they are called on to play in most of the other cases they handle in their law offices is likewise in large part the role of a counsellor not only at law but also in human relations. Almost every time a lawyer advises a client he is not only practicing law; he is also, whether he knows it or not, practicing psychology." Pilpel, *supra* at 134.

20. Vanderbilt, *The Future of Legal Education*, 43 A.B.A.J. 207, 208 (1957). See also Llewellyn, *The Modern Approach to Counselling and Advocacy — Especially in Commercial Transactions*, 46 COLUM. L. REV. 167, 194 (1946): "Good counselors counsel today no longer for the maximum blood squeezeage. They have discovered that that kind of counsel or of document bites back. It offends any customer who may read it. It offends a court. And a court can find ways through or under any language you can write. *Lasting relations* are built on a view of the client and the other party as in some sort a [sic] working team, . . .

"Vision and sense for the Whole, and skills in finding ways, smoothing friction, handling men in any situation, with speed, with sureness: these mark our best."; Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL ED. 189, 201 (1948): "The lawyer is today compelled to participate in decisions that represent a synthesis of many factors, of which legal rules are often only a part, and sometimes a very subsidiary part."

## C.

## Advocacy

The primary task of the advocate is to persuade the court (or the administrative tribunal, as the case may be) to his view of the law and the facts of his client's cause. In our adversary system of jurisprudence, it is the duty of the lawyer in his role as advocate to convince the court of the justice and fairness which preponderate in his client's favor. He must induce the court to believe something so that it will act in accordance with this belief. He must influence by argument, advice, entreaty or expostulation. He must prevail on and win over a judicial or administrative tribunal to the justice and decency of his cause. Stated in another way, "the function of an advocate is not to ascertain the truth; the function of an advocate is to present from one side of the case all that can be usefully and properly said, in order that it may be compared with what is presented from the other side of the case, so far as that can be usefully and properly said, and in order that the tribunal may then have before it these competing considerations and may hammer out on which side the truth really lies."<sup>21</sup> This is no simple task by any means. That a sure command of grammar, rhetoric, diction and nuance are prime prerequisites is surely beyond gainsay. Therefore, advocacy based upon a facile and persuasive command of English is the advocacy most likely to breed success.

## D.

## Negotiation

Another of the important skills which should be in every lawyer's equipment bag is the art of negotiation. As Professor Mathews has so pithily indicated: "[S]carcely a day passes in the life of a busy lawyer without participation to some degree in the process of negotiation."<sup>22</sup>

Like advocacy, negotiation, too, requires persuasion; possibly in a gentler and more delicate form. Negotiation in contractual relations; negotiation in domestic relations; negotiation in labor disputes; negotiation with administrative tribunals; negotiation in real estate transactions; and negotiation even in such activities as seeking continuances, adjournments and stipulated adjustments of all types of preliminary or minor matters. These are only some of the areas in which this important function of a lawyer's daily activity takes place.

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21. Simon, *The Vocation of an Advocate*, 25 CAN. B. REV. 153, 160 (1947).

22. Mathews, *Negotiation: A Pedagogical Challenge*, 6 J. LEGAL ED. 93 (1953).

Basically, as Professor Mathews has pointed out, "negotiation may be tentatively described, then, as a process of adjustment of existing differences, with a view to the establishment of a mutually more desirable legal relation by means of barter and compromise of legal rights and duties and of economic, psychological, social and other interests."<sup>23</sup>

Fundamentally, negotiation is a delicate art which brings into play numerous personal skills and insights such as "personal behavior in terms of poise, assurance and mobility, all conveyed (or not) by voice and manner."<sup>24</sup> Essentially, therefore, sound mastery of English is a solid base upon which all manner of skill in the art of negotiation is bottomed. For ultimately, in the area of negotiation, the gentle persuasive qualities engendered by precise and effective English will leave their successful mark.

### E.

#### Drafting

It must be conceded that the drafting of legal instruments is a most important and major part of a lawyer's professional activity. As one appellate court tersely stated :

The practice of the law . . . embraces much more than the conduct of litigation. The greater, more responsible and delicate part of a lawyer's work is in the other direction. Drafting instruments, creating trusts, formulating contracts, drawing wills and negotiations, all require legal knowledge and power of adaptation of the highest order. Beside these employments, mere skill in trying law suits, where ready wit and natural resources often prevail against profound knowledge of the law, is a relatively unimportant part of a lawyer's work.<sup>25</sup>

Legal draftsmanship is basically concerned with words — or more broadly, with language technique. But words, as the very marrow of language, must be known and thoroughly understood when it is sought to state facts accurately and communicate ideas precisely. In the words of Justice Holmes, "A word is the skin of a thought."

In analyzing the relative importance of words, it is important to remember that words are as much a part of the subject matter as

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23. *Id.* at 94.

24. *Id.* at 96.

25. *People v. Title Guaranty & Trust Co.*, 180 App. Div. 648, 650, 168 N.Y. Supp. 278, 280-81 (1917).

the actual knowledge of things.<sup>26</sup> Which is to take precedence as far as the relative importance is concerned was summed up by Erasmus when he said: "Cognito Verborum prior est, Cognito Rerum portior est." Undoubtedly, said Erasmus, "The knowledge of things is more potent," but, said he, "the knowledge of words, of terms, of sentences, of arrangement is prior"; at least, we may say, so far as the art of legal draftsmanship is concerned.

### III.

#### REMEDIAL LANGUAGE SUGGESTIONS

If it be conceded that precise, persuasive and elegant English is a lawyer's basic working tool, then it should necessarily follow that it is the duty of law schools to assume a more responsible proportion of the burden of seeing to it that the embryonic lawyer goes forth equipped with this important linguistic tool of his craft. Furthermore, it should also be one of the primary functions of law schools to oversee that the tool be kept in proper working order right through the law student's professional training. While law schools have made sincere efforts along these lines, the writer feels that the programs and methods used have not been commensurate or extensive enough to meet the need. The following suggestions are therefore being offered in the hope that they may prove of value in fostering a more adequate command of English among law students which, it is hoped, will be carried over into their professional lives.

#### A.

##### An English Program in Law School

First, rhetoric and grammar should be made required courses in the law school curriculum. Furthermore, they should be taught either separately or together as found best from a pedagogical point of view, at least once during each year of law school training. The teaching of these courses should not be viewed as a perfunctory chore, but rather as a vital cog in the machine of professional education. Skilled instructors of English should be sought and retained as full-time teachers of the law faculty quite similar to economists and sociologists who now compliment many law school faculties. Of course, the ideal teacher for such a program would be one who has majored in English in his

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26. Mackay, *Introduction to an Essay on the Art of Legal Composition Commonly Called Drafting*, 3 L.Q. REV. 326 (1887).

undergraduate work and who is also a law school graduate. Law teachers with a gift for the teaching of language in all of its ramifications should be utilized.

Second, the importance of these language courses should be explained to the students; especially directed to those doubters who might be inclined to feel that law schools are relegating themselves to the lowest rung of professional stature by indulging in the teaching of bare-bone English fundamentals.

Historical orientation should be gone into. Let the student be made aware of the fact that it was the feeling of the humanist lawyer of the Renaissance era — dedicated scholars of lofty ideals — that for the study of civil law, one would first be required to be a capable grammarian in the broadest sense. Let the student understand that the humanists, seeking to be leaders of society through wisdom and eloquence, gave a preferred position in education to such subjects as grammar, dialectics and rhetoric. They believed that only through training as grammarians in the vast classical literatures of Greece and Rome, came wisdom. They furthermore believed that this wisdom was no private possession; it belonged to society, and it could be given to society by themselves as wise counsellors became eloquent men. Eloquence, they felt, came from nature and nurture; and nurture embodied training in dialectics and in rhetoric. They maintained that dialectics taught one how to speak accurately and with emphatic insight on any specific subject. Dialectics provided an armory for attack and a moat for defense. To the humanist lawyer rhetoric was the vertex; and both grammar and dialectics viewed rhetoric as the embodiment and fulfillment of this happy merger. To the humanist lawyer, rhetoric was the art whereby the lawyer could express himself with such clarity as to be fully understood; with such elegance that he never lost his hearers; and with such persuasiveness that the judge would be led to act in accordance with the advocate's wisdom. Accordingly, if the student understands the pointed historical impact of language study as a viable and vital factor in his legal training, there is good reason to believe that all his former doubts as to the importance of broad language training will be eradicated.<sup>27</sup>

Third, in order to foster greater breadth and depth in thinking, speaking and writing in law students so that they may emerge more adequately trained for courageous leadership and the formulation of sound public policy formulae,<sup>28</sup> a program of classical and humanistic

27. Breen, *Renaissance Humanism and the Roman Law*, 38 ORG. L. REV. 289, 299-300 (1959).

28. Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).

studies should be set up as a required segment of legal education to run through the entire three years of the students' professional education. Breadth and depth in thinking should be stressed as an aid in dealing more soundly with legal problems. This is in keeping with Dean Griswold's judicious observation that "lawyers could do an even better job than they are now doing if they had a broader education in law school."<sup>29</sup> Or, as part of required courses in Jurisprudence — which, too, should run through the entire three year period of legal training —<sup>30</sup> the rhetorical as well as the historical and legal aspects of the courses should be stressed. Important thinkers who have influenced Western legal thought from Plato, Cicero and St. Augustine down through more modern writers, Kant, Savigny, Spengler, Cairns and Kelsen, to mention only a few, could be dwelt upon to good advantage from the jurisprudential as well as the rhetorical point of view. In this way, the student would be constantly brought into direct contact not only with the legal and historical factors of his studies but also with the importance of the thought ideas as well as the linguistic factors as gleaned from these authors.

And last, as part of this overall program in the area of language and communication, courses such as semantics and psycholinguistics should also be given as part and parcel of the regular law school curriculum; even at the expense of removing some of the so-called legal courses. Students should be introduced to what William James has referred to as the important area of "unverbalized life," which he said is, at times more of a revealer of human nature and the processes of the psyche than our dulled habits of word usage are capable of communicating. Students should be taught to peer behind words to the realities that words are used to symbolize; for language has inescapable limitations.<sup>31</sup> For actually, language at its best is still an inadequate instrument to convey the many-hued shadings of

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29. Griswold, *Law Schools and Human Relations*, 1955 WASH. U.L.Q. 217, 231. See also Hogan, *The Need for a Course in Jurisprudence in Law Schools*, 9 LEGAL ED. 219 (1956).

30. For a ramification of this view, see Ray, *The New Curriculum at Southern Methodist University*, 3 J. LEGAL ED. 449-51 (1951), where an excellent course in Jurisprudence is given to first year students. Of course, it would be killing the proverbial two birds with one stone, if the instructor were able to dwell on the grammatical, rhetorical and other linguistic aspects of the course, even if only to create an awareness of these aspects in legal education, in addition to the jurisprudential ideas and concepts. See also Parker, *Teaching Jurisprudence in a Smaller Law School*, 9 J. LEGAL ED. 444 (1957).

31. See Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 1, 38 (1951). See also Arens & Meadow, *Psycholinguistics and the Confession Dilemma*, 56 COLUM. L. REV. 19 (1956); Philbrick, *Language and the Law: The Semantics of Forensic English*, 47 MICH. L. REV. 871 (1949); *The Language of Law*, 9 W. RES. L. REV. 115 (1958).

meaning that one may seek to convey. There are countless moods and feelings which elude verbal expression.

Nevertheless, it would seem that a great deal can be done toward bridging the gap between feeling, thought and verbalism by developing within the student a sense of "poetic insight." Students should be assigned and encouraged to read "poetic" writing in order to gain insight into the world of un verbalized feeling and thought. Montaigne, Emerson, Shakespeare, Milton and Marcus Aurelius are only a very few of the many greats into whose company students should be invited, even if only on limited occasions throughout their entire law school training. Seminars to stretch and lubricate the mental arteries which have become narrowed by specialized legal thinking should be initiated at least once throughout each law school year. As Oliver Wendell Holmes once remarked: "A man's mind stretched by a new idea can never go back to its original dimensions." Above all, let us feel that we are working toward the goal of producing not only a competent lawyer, but also a truly cultivated human being.

In stressing the importance of breadth and depth in language and in thought, two eminent legal educators have very aptly pointed up the problem in the following manner:

The lawyer, it must be recalled, is a member of a learned profession — of a skill group which has the temerity to make a profession of tendering advice to others. It is his responsibility to acquaint himself not only with what the learned have thought, and with the historical trends of his time, but also with the long-term interests of all whom he serves and the appropriate means of securing such interests. . . . We submit that adequate training must therefore include experiences that aid the developing lawyer to acquire certain skills of thought: goal-thinking, trend-thinking and scientific thinking. . . . The lawyer's traditional storehouse of learning is already too tightly stuffed with legacies from the past to be thoroughly mastered by any one in a lifetime of devoted scholarship; a student must, if he is not to choke on triviality, have extrinsic criteria of relevance. There comes a time, as Mr. Justice Holmes long ago remarked, when energy can be more profitably spent than in reading cases.<sup>32</sup>

May not this energy that Justice Holmes speaks of be more profitably utilized by the law student in reading, discussing and writing about classic and humanistic thinking and writing as a means of broadening and deepening his mastery of language and thought?

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32. Lasswell & McDougal, *supra* note 28 at 211-12, 215-16.

## B.

How to Fit Important New Courses Into a  
Law School Curriculum

Of course, it might be conceded that the study of grammar, rhetoric and the classics within a law school curriculum is desirable and possibly even appropriate. But, it might be asked, how can such broadening studies be fitted into an already tight and plethoric law school curriculum.

The answers will not be too difficult to find if we realize that there are growing indications that legal education is slowly bogging down in a quagmire of minutiae. The broad pattern of the forest is slowly being lost sight of for the myriad trees, proliferating branches and the countless shimmering leaves. There is a continual process of adding new courses without, at times, any elimination or reduction of the old. Possibly, reconsidered thinking in this area is necessary.

Professor Llewellyn has observed that too many casebook editors have assumed the obligation of attempting to cover every aspect of their field, which under normal conditions would call for three times the time available.<sup>33</sup> There are also indications that at times legal educators have lost sight of the fact that law schools cannot — nor is it their duty to — turn out finished practitioners in three years.<sup>34</sup>

Recognizing the needless proliferation of new courses and the expansion of old courses, Professor Weihofen sounded the alarm more than fifteen years ago when he said, "Even without the spur of war conditions the law schools face a situation which demands a streamlining of the curriculum."<sup>35</sup> In dwelling upon the problem of course expansion versus educational economy, Professor Weihofen indicated that there would seem to be room for careful inquiry into the question of how much case material is necessary for mastery of a given legal principle or concept; [and] whether law students do not

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33. Llewellyn, *On the Problem of Teaching Private Law*, 34 HARV. L. REV. 775 (1941).

34. Vanderbilt, *The Mission of a Law Center*, 27 N.Y.U.L. REV. 20, 25 (1952).

35. Weihofen, *Education for Law Teachers*, 43 COLUM. L. REV. 423, 437 (1943). See also Cheatham, *Legal Education — Some Predictions*, 26 TEXAS L. REV. 174, 181-82 (1947): "There is a temptation to meet the difficulty by adding a fourth year to take care of the new legal material. It is a temptation which must be resisted, for we could not deal with all the new subjects in the old way even if we went on and added a fifth or sixth year to the law school curriculum. I share the feeling of a teacher now on the federal bench who said: 'Until we law teachers learn how to give our students more from our courses, we should talk of shortening the curriculum to two years instead of lengthening it to four years. . . . I suggest three principle lines of development in our planning and teaching. They are indicated by three words, Economy, Variety, and Depth.'"



overlearn certain concepts such as 'consideration,' 'negligence,' 'scope of employment' and 'substantive "due process";' . . .<sup>36</sup>

More recently, another eminent legal educator has also stressed the need for a reorganization of present day legal education in the direction of consolidating and simplifying the entire curriculum structure.<sup>37</sup> This may well be the answer to this difficult problem of making room for relatively important new courses; especially, where the need for including and stressing fundamental legal tools—such as language mastery as a basic and indispensable element of sound legal education—is most urgent.

The process of combining or consolidating courses as a means of streamlining a curriculum and cutting across narrow and restricted course lines is not a new concept, albeit, a rather excellent one.<sup>38</sup> Unfortunately, not enough has been done along these lines; although word does come through from time to time that there are those

36. Weihofen, *supra* note 35 at 438. Compare CORBIN, *CASES ON CONTRACTS* (1947) (1381 pages), with SIMPSON, *CASES ON CONTRACTS* (1956) (592 pages). Quære — Would a teacher of Contracts be considered remiss in his duty if he should choose to use Simpson's casebook instead of Corbin's? To the same effect, compare COOK, *CASES ON EQUITY* (1948) (1192 pages), with VAN HECKE, *CASES ON EQUITY* (1959) (651 pages); compare STEFFEN, *CASES ON AGENCY* (1952) (902 pages), with SEAVEY & HALL, *CASES ON AGENCY* (1956) (431 pages).

37. See Griswold, *Law Schools and Human Relations*, 1955 WASH. U.L.Q. 217, 229-30: "One thing, it seems to me, is clear about legal education. It is trying to do too much already. . . . Clearly, though, the fact that the law schools are trying to do too much and the fact that law teachers are almost forced to become enmeshed in detail are related. . . . It may well be that the next great developments in legal education will be in the direction of consolidating and simplifying. As one of my friends has said, we have for too long been teaching less and less about more and more. We should now reverse this tendency and consciously seek to teach more and more about less and less. Or, as one of my colleagues has said, we should sink some shafts, but not try to make tracks over the entire field. If more of this were done, it might be possible to make more use of new materials and new approaches.

"It is no longer possible for a student to know all the law. Nor is it either necessary or desirable. The colleges have faced a similar problem and have evolved a workable solution in terms of general education. Perhaps we need some of the general education approach in the law school. What would happen if half as much time were spent on negligence — or undisclosed principle? Students would of course know that these things exist. They should have their minds sharpened on some aspects of these problems. But we may be, I fear, trying to pump too much minutiae into our students for their own good. We might be able to give them what they really need with broader strokes, and with less detail.

"A lawyer's education is never done. If we prepare our students so that they are able to tackle any problem that comes along, working it out in detail when they need to do so, we may accomplish more for them and for society than if we try to give them all the details in school." See also Griswold, *Law Schools and the Legal Profession*, 7 J. LEGAL ED. 305, 311-12 (1955); "It may well be that the developments in the legal education of students have gone far enough, if not too far. We may now be too much concerned in the law schools with details, with covering all of the ground. . . . The law schools should remember more clearly that they do not need to teach their students all the law. What the students should be taught is the background, the spirit, the traditions, the methods — how to deal with questions, how to make themselves expert on new questions in a relatively short time."

38. See, e.g., Casner, *What makes a Law School Great*, 1956 U. Ill. L.F. 270, 271; Wright, *The University Law Schools*, 2 J. LEGAL ED. 409, 416-17 (1949).

pioneering and foresighted legal pedagogues who do see merit in its theory and practice.<sup>39</sup>

In some schools, as a further means of curriculum streamlining, certain subjects have already been eliminated as separate courses and have now been dovetailed in part into other courses.<sup>40</sup> This is also a salutary and helpful measure to permit the inclusion of relatively important and new subjects within an ever-evolving and changing curriculum framework.

Overhauling, reorganizing and streamlining the law school curriculum are important facets of law school educational planning. There is much that still can be done in this area. The writer has no doubts that much will be done in the not too distant future if law schools are to keep pace with our ever-changing and expanding social and economic patterns and structures.

#### IV.

#### CONCLUSION

Language is the marrow of the law. As such, it should be taught on equal parity with all other so-called important legal subjects. In its broadest sense, it should be made a part of the regular law school curriculum. And, even more, it should be continued as an endless process of legal education: from the time the student commences his legal training up until he retires from active practice. Prophetically, a noted jurist and legal educator has summed up the importance of language to the legal profession in the following manner:

It is the lawyer's business to master words; the risk that the law runs is that they may master him. If they do, and to the extent that they do, the law will fail to translate into action the ideals of the community. All aspects of the process of communication are vital to the lawyer and to the law. Awareness and absorption of new depths of understanding must begin early and must be continuous if they are to have a real impact.<sup>41</sup>

May not the object of legal education be better served by giving language its proper place within the law school curriculum?

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39. See, e.g., Foust, *An Experimental Course in Wrongs — Tentative Appraisal*, 10 J. LEGAL ED. 497, 508 (1958): "In relation to professional training, the combination of torts and criminal law is superior to teaching them singly. It tends to channel the student's thought into the function of each and into problems of over-all policy. Nor is this gain at the expense of the analytical training for which torts and criminal law have always been well adapted." See also Cowan, *Contract and Torts Should Be Merged*, 7 J. LEGAL ED. 377 (1955).

40. See, e.g., Cribbet, *The Evolving Curriculum — A Decade of Curriculum Change at the University of Illinois*, 11 J. LEGAL ED. 227 (1958).

41. Schaefer, *Foreword to the Language of the Law*, 9 W. RES. L. REV. 117 (1958).